No. 715

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

THE UNITED STATES OF AMERICA
PETITIONER

v.

ARLENE SUMMERLIN, AS ANCILLARY ADMINISTRATRIX OF THE ESTATE OF J. F. ANDREW, DECEASED

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

BRIEF FOR THE RESPONDENT

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OPINIONS BELOW

The brief of the United States correctly states the opinions below.

JURISDICTIONS

The brief of the United States correctly states the jurisdiction.

QUESTION PRESENTED

Correctly stated by brief for the United States.

STATUTE INVOLVED

Correctly stated by brief for the United States.

SUMMARY OF ARGUMENT.

Almost the entire brief of the United States is used up in citing authorities to the effect that the United States is not bound by statutes of limitations and common law doctrines of laches, and with these authorities, I have no argument because it has been admitted by the respondent throughout all of the litigation in the State courts and will be admitted by respondent in this Court, that the United States is ordinarily not bound by statutes of limitations or common law doctrines of laches, and it has further been admitted by respondent that Federal Housing Authority is constitutional, and that the United States is the owner of the claim.

The only contention of respondent is that the statute in question, Section 5541 (92) Permanent Supplement Compiled General Laws of Florida (1927), amounts in law to a rule of procedure and is not a statute of limitations, United States of America v. Arlene Summerlin, as ancillary administratrix of the Estate of J. F. Andrew, deceased, 191 So. 842, and all of the argument and authorities we cite herein are on this question, as respondent feels that this is the only question before this court on this hearing.

And that the United States is as much bound by this rule of procedure contained in the above statute as any other individual would be in this case.

ARGUMENT.

THE CLAIM OF THE UNITED STATES IS BARRED BY THE FAILURE TO FILE WITHIN THE PERIOD PRESCRIBED BY THE FLORIDA STATUTE ITS PROOF OF CLAIM IN THE PROBATE COURT OF POLK COUNTY, FLORIDA.

1. It is well settled that the United States Courts are bound by the construction of a State statute made by a court of last resort in such State. Erie R. R. Co. v. Tompkins, 58 Sup. Ct. 817; State of Minnesota, ex rel, Pearson v. Probate Court of Ramsey County, Minnesota, et al, 60 Sup. Ct. 523.

This statute in question has been so construed by the Supreme Court of Florida in several instances, United States v. Arlene Summerlin, etc. 191 So. 842; Brooks v. Federal Land Bank, 106 Fla. 412; 143 So. 749; Cumberland & Liberty Mills v. Keggins, 190 So. 492.

2. So, we find that the question now before this Court to determine is the United States bound by this rule of procedure in the State of Florida when the United States comes into the State Court of its own motion. If this question has ever been decided by the Supreme Court of the United States, I have been unable to find such decision, but the Supreme Court of the United States has held that

> Wherever the Government of the United States through its lawful authorized agents becomes the holder of a bill of exchange, it is bound to use the same diligence in order to charge the endorser as in a transaction be-

tween private individuals, United States v. Barker, 12 Wheaton, 559; 25 U. S. 559 * * *.

This case has never been overruled or in any way modified so far as I can determine and this principle of law was set down in even stronger language by the Supreme Court of the United States in the case of Cooke, et al, v. United States, 91 U. S., 389; The Floyd Acceptances, 7 Wall. 666; 74 U. S. 666; United States v. Bank of Metropolis, 15 Peters, 377; 40 U. S. 377.

These cases very definitely hold that the United States is bound by rules of procedure on commercial paper and that the rights of the United States can be lost by failure to observe these rules.

3. Government counsel in their brief admit that these decisions of the Supreme Court of the United States are good law, and are still in full force and effect, but contend the decisions have no application here because the rules of the law merchant are designed to promote the marketability of commercial paper, and the United States impliedly intends to be bound thereby for the reason that from the daily unavoidable use of commercial paper by the United States, they are as much interested as the community at large can be in maintaining these principles (Government Brief PP 17 & 18.)

The extent to which the Government and agencies guaranteed by the Government is now dealing in real estate and personal property throughout the country renders this argument futile for the United States is now as much interested in the title to real estate and personal prop-

erty as it is or ever has been in commercial paper and therefore, it is as much to the interest of the United States to follow the rules of procedure with reference to real estate and personal property as it can be to any other person.

4. It will be noted that the Florida Statute of non-claim does not provide for the suing or enforcement of claims required to be filed, and therefore it is no more vexatious or troublesome for the Government to comply with the statute than it was for the Government to comply with the law merchant rules, to give notice on dishonored bills of exchange.

5. It is admitted by opposing counsel that if the Government is not required to file its claim in the Probate Court under this statute within the eight months period, that the United States cannot be required to file its claim in the Probate Court at any time, and the attempted filing of the claim in the Probate Court of Polk County, Florida, was a useless act and served no useful purpose, if the contention of counsel for the United States is correct.

If this is true, then there can be no such thing as orderly or complete administration of estates of decedents in Florida, for however careful the legal representatives of the estate of the decedent might inquire, they could never be certain that they had determined the United States held no claim against the estate.

The heir would take the property of his ancestor subject to this cloud of suspicion and would thus own the property of his ancestor throughout all future time.

6. In Florida, as doubtless in other States, there are untold thousands of obligations due the United States or its duly accredited agencies, which gives the obligation all of the sanctity of an obligation held by the United States, and all of which are purely commercial in nature, and no part of which are due the United States as taxes of any nature or kind whatsoever. If the United States is not required to file notice of these claims held by it and its accredited agencies against the estates of decedents, the administration of estates in Florida will cease to be orderly and in effect will be without result.

CONCLUSION.

Because of the law and facts set forth in the foregoing argument, it is respectfully submitted that the decision of the Court below should be affirmed.

ASBURY SUMMERLIN, Attorney for Arlene Summerlin, as ancillary administratrix of the estate of J. F. Andrew, deceased.

SUPREME COURT OF THE UNITED STATES.

No. 715.—October Term, 1939.

The United States of America, Petitioner, *vs.* Arlene Summerlin, as Ancillary Administratrix of the estate of J. F. Andrew, deceased. } On Writ of Certiorari to the Supreme Court of the State of Florida.

[May 27, 1940.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

By a series of transactions, which it is unnecessary to review, the Federal Housing Administrator, acting on behalf of the United States, became the assignee of a claim against the estate of one J. F. Andrew, deceased. Respondent was appointed ancillary administratrix of that estate by the County Judge of Polk County, Florida. Respondent, on August 13, 1937, gave notice by publication to the creditors of the estate to file proof of their claims within eight months as required by the state statute.

The United States filed its claim in the office of the County Judge on July 1, 1938, with a petition asking that the claim be allowed with the priority accorded by the federal statutes (31 U. S. C. 191, 192) and also asserting that the state statute as to the time for filing claims did not apply to claims of the United States. The County Judge denied the petition, holding that the state statute was applicable and further adjudging that the claim of the United States be "disallowed as a claim against the estate" of the decedent.

The United States appealed to the Circuit Court for Polk County, where the order of the County Judge was in all respects affirmed. The judgment explicitly declared the claim of the United States to be "void", because not filed within the time prescribed. An appeal to the Supreme Court of Florida resulted in affirmance of the judgment of the Circuit Court. 191 So. 842. We granted certiorari because of the importance of the question. March 25, 1940.

The statute of Florida (Section 5541 (92) Compiled General Laws of 1927) provides:

"No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee, or devisee of the decedent unless the same shall be in writing and contain the place of residence and post office address of the claimant and shall be sworn to by the claimant, his agent or attorney and be filed in the office of the county judge granting letters. Any such claim or demand not so filed within eight months from the time of the first publication of the notice to creditors shall be void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise: . . . .

The claim assigned to the Federal Housing Administrator acting on behalf of the United States became the claim of the United States, and the United States thereupon became entitled to enforce it. Act of June 27, 1934, 48 Stat. 1246. Compare *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, 477; *Pittman* v. *Home Owners Loan Corporation*, 308 U. S. 21, 32, 33.

It is well settled that the United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights. *United States* v. *Thompson*, 98 U. S. 486; *United States* v. *Nashville, Chattanooga & St. Louis Ry. Co.*, 118 U. S. 120, 125, 126; *Stanley* v. *Schwalby*, 147 U. S. 508, 514, 515; *Guaranty Trust Company* v. *United States*, 304 U. S. 126, 132; *Board of Commissioners* v. *United States*, 308 U. S. 343, 351. The same rule applies whether the United States brings its suit in its own courts or in a state court. *Davis, Director General of Railroads* v. *Corona Coal Co.*, 265 U. S. 219, 222, 223.

We are of the opinion that the fact that the claim was acquired by the United States through operations under the National Housing Act does not take the case out of this rule. The state court treated the case as in the same category as one of "statutes providing for conveyancing and marketing negotiable instruments, and conducting other business relations". But this is not a case relating to the application of the law merchant as to the transfer of negotiable paper and the diligence necessary to charge an endorser or as to the meaning by the United States of certain responsibilities by becom-

ing a party to such paper. *United States* v. *Barker*, 12 Wheat. 559; *Cooke* v. *United States*, 91 U. S. 389, 396. Even as a holder of such paper, as *e.g.* negotiable bonds, the United States suing the maker is not bound by a state statute of limitations. *United States* v. *Nashville, Chattanooga & St. Louis Ry. Co.*, *supra*. When the United States becomes entitled to a claim, acting in its governmental capacity and asserts its claim in that right, it cannot be deemed to have abdicated its governmental authority so as to become subject to a state statute putting a time limit upon enforcement. *Chesapeake & Delaware Canal Company* v. *United States*, 250 U. S. 123, 126, 127.

The state court, however, has said that the statute in question is not a statute of limitations, but rather a statute of "non-claim" for the orderly and expeditious settlement of decedents' estates. Presumably the court refers to the provision of the statute that if a claim is not filed within the specified period "it shall be void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise".

If this were a statute merely determining the limits of the jurisdiction of a probate court and thus providing that the County Judge should have no jurisdiction to receive or pass upon claims not filed within the eight months, while leaving an opportunity to the United States otherwise to enforce its claim, the authority of the State to impose such a limitation upon its probate court might be conceded. But if the statute, as sustained by the state court, undertakes to invalidate the claim of the United States, so that it cannot be enforced at all, because not filed within eight months, we think the statute in that sense transgressed the limits of state power. *Davis, Director General of Railroads* v. *Corona Coal Company*, *supra*.

Mr. Justice Story had occasion to consider the application to the Government of a state statute purporting to bar claims against decedent's estates in *United States* v. *Hoar*, 2 Mason 311. There an action was brought by the United States against an administrator of an estate and the defendant pleaded the general statute of limitation of Massachusetts as to personal actions and also the particular statute limiting suits against executors and administrators to four years after the acceptance of the trust. Mr. Justice Story

thought it clear that the defense of these statutes of limiations could not avail. The question whether a further defense of *plene administravit* was good, that is, whether a distribution of surplus assets after the payment of all known debts among the heirs, either voluntary or under a probate decree, would protect the administrator from suit by the United States, it was thought not necessary to decide. Nor have we such a question here.

We hold that the state statute in this instance requiring claims to be filed within eight months cannot deprive the United States of its right to enforce its claim; that the United States still has its right of action against the administrator, even though the probate court is to be regarded as having no jurisdiction to receive a claim after the expiration of the specified period.

So far as the judgment goes beyond the question of the jurisdiction of the probate court and purports to adjudge that the claim of the United States is void as a claim against the estate of the decedent because of failure to comply with the statute, the judgment is reversed.

The cause is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.